
What is the Second Injury Fund?

The Second Injury Fund functions within the South Carolina Workers= Compensation System. It protects employers from having a higher cost for an employee=s injury when that injury, combined with a prior injury or disability, produces medical costs or a disability that is substantially greater than the accident alone would have produced. This ensures that an employer is not made to suffer a greater monetary loss or increased insurance costs because they hire an employee who has a disability.

Quite often, fearing increased workers= compensation costs, employers are reluctant to hire or retain the disabled. The Second Injury Fund is designed to encourage employers to hire the disabled by limiting the cost of a workers= compensation claim when a disabled employee is injured on the job.

When properly placed, a disabled worker is no more likely to have job-related accidents than any other person.

Disabled workers have a better overall attendance record and are less likely to Ajob hop@ than other workers.

Each time an unemployed disabled person obtains gainful employment, he becomes a taxpayer rather than a tax user.

The Second Injury Fund can provide employers a way to reduce workers= compensation premiums when the employer or the employer=s carrier recovers from the Fund.

What Are The Basic Pre- Requisites for Reimbursement?

- A. The employee must have a prior permanent physical impairment;
- B. The employer must have knowledge of the impairment prior to the subsequent injury;
- C. The employee must sustain a subsequent occupational injury; and,
- D. The employer's liability for disability must be substantially greater by reason of the combined effects of the new injury and the pre-existing condition, or by aggravation of the pre-existing condition, than that which would have resulted from the injury alone; or

- 1. The subsequent injury most probably would not have occurred "but for" the presence of the prior impairment; or
- 2. If the subsequent injury results in the death of the employee, and the death would not have occurred "except for" the pre-existing impairment; and
- E. The employer or his carrier must notify the Fund and the Commission of a possible claim in writing prior to payment of the first seventy-eight weeks of compensation.

What is a Prior Permanent Physical Impairment?

- A. It is a condition resulting from any cause or origin which is both

- 1. Permanent; and
- 2. Of such seriousness as to constitute a hindrance to obtaining employment or re-employment if the employee should be unemployed.

- B. The following conditions are presumed to meet the above requirements:

- 1) Epilepsy
- 2) Diabetes
- 3) Cardiac disease
- 4) Arthritis
- 5) Amputated foot, leg, arm or hand
- 6) Loss of sight of one or both eyes or partial loss more than seventy-five percent bilateral
- 7) Residual disability from poliomyelitis
- 8) Cerebral palsy
- 9) Multiple sclerosis
- 10) Parkinson=s disease
- 11) Cerebral vascular accident
- 12) Tuberculosis
- 13) Silicosis
- 14) Psychoneurotic disability following treatment in a recognized medical or mental institution.
- 15) Hemophilia
- 16) Chronic osteomyelitis
- 17) Ankylosis of joints
- 18) Hyperinsulinism
- 19) Muscular dystrophy
- 20) Arteriosclerosis
- 21) Thrombophlebitis

<p>22) Varicose veins 23) Heavy metal poisoning 24) Ionizing radiation injury 25) Compressed air sequelae 26) Ruptured intervertebral disc 27) Hodgkins disease 28) Brain damage 29) Deafness 30) Cancer 31) Sickle-cell anemia 32) Pulmonary disease 33) Mental retardation provided the employee=s intelligence quotient is such that he falls within the lowest percentile of the general population. However, it shall not be necessary for the employer to know the employee=s actual intelligence quotient or actual relative ranking in relation to the intelligence quotient of the general population. 34) Any other pre-existing disease, condition or impairment which is permanent in nature and which:</p> <p style="padding-left: 40px;">(a) Would qualify for payment of weekly disability benefits of seventy-eight weeks or more under Section 42-9-30 exclusive of benefits payable for disfigurement; or</p> <p style="padding-left: 40px;">(b) Would support a rating of seventy-eight weeks or more of weekly disability benefits when evaluated according to the standards applied to workers= compensation cases in South Carolina, or combines with a subsequent injury to cause a permanent impairment rated at seventy-eight weeks or more under Section 42-9-30.</p> <p>or</p> <p style="text-align: center;"><i>How Does an Employer Meet the Knowledge Requirement?</i></p> <p>A. The employer must prove that he was aware of the employee=s permanent physical impairment prior to the occurrence of the accident for which reimbursement is requested.</p> <p>Examples of proof might include:</p> <p style="padding-left: 40px;">1. Copies of a post employment or retention physical; or</p>	<p>2. Medical records or group insurance claim forms which establish the nature of the condition and that the employer has possession of these records prior to the latest accident; or</p> <p>3. A signed statement made by the employer at the time of hire or retention confirming the pre-existing condition.</p> <p>B. If an employee conceals information from his employer regarding a pre-existing permanent impairment, it will be necessary for an employer to <u>prove</u> an attempt was made prior to the latest accident, to obtain information from the employee regarding any pre-existing conditions. This might be a post employment application form, which asks about disabilities.</p> <p style="text-align: center;"><i>What Establishes Aggravation, Substantial Increases, Etc.</i></p> <p>It is recommended to employers or their carriers that they question the <u>treating physician</u> to determine whether a pre-existing condition aggravated or combined with the occupational injury to cause a substantial increase in liability.</p> <p style="text-align: center;"><i>What Determines a Reimbursable Abut For@ Claim?</i></p> <p>It is recommended to employers or their carriers that they question the injured employee or witnesses about the facts of an accident to determine whether a pre-existing condition caused <u>the accident or death</u>.</p> <p>An example of a reimbursable Abut for@ claim:</p> <p>A completely deaf employee is struck and killed when he walks into the path of a forklift, which is backing up. Witnesses to the accident state that the employee paid no attention to the warning horn that was being sounded by the forklift. Thus, this <u>accident</u> would not have occurred if the employee had not been deaf.</p>
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What Benefits are Available?

- A. In most cases, an employer or carrier will be able to obtain reimbursement for:
1. All compensation benefit payments beyond the first 78 weeks of disability, and
 2. All medical payments beyond the first 78 weeks of medical care.
- B. In addition, if any employer or carrier can establish that his liability for medical payments is substantially greater by reason of the combined effects of the prior impairment and the subsequent injury or by reason of the prior impairment than that which would have resulted from the subsequent injury alone, then there will be reimbursement for 50 percent of all medical payments over \$3,000.00 during the first 78 weeks of medical care.
- C. When an employee becomes permanently and totally disabled because of the loss of a hand, arm, foot, leg or the vision of an eye in a subsequent injury and the employee had a pre-existing loss of a hand, arm, foot, leg or the vision of any eye, then the employee may be eligible for permanent and total disability benefits as defined in Section 42-9-410 of the South Carolina Workers= Compensation Act. The employer will be reimbursed in one of the following manners:
1. In those cases where the subsequent loss of member or eyesight was not caused or contributed to by any of the conditions defined as a permanent physical impairment, the employer will be reimbursed only for medical and disability benefits in excess of these benefits payable had the employee not had the prior loss of a hand, arm, foot, leg or vision of an eye.
 2. In those cases where the subsequent loss of member or eyesight was caused or contributed to by any of the conditions defined as a permanent physical impairment, the employer will be reimbursed all benefits paid in excess of 78 weeks. (See Answer A and B of this question)

How is the Fund Financed?

At the end of each fiscal year, the Fund will collect by assessments to carriers, self-insureds and the State Workers= Compensation Fund an amount equal to 175 percent of the total disbursement of the Fund minus its remaining assests.

The following example will illustrate how individual assessments are determined.

If a specific carrier paid one percent of all benefits paid under the Workers= Compensation Act the previous calendar year, the carrier would be assessed one percent of the amount to be collected by the Fund.

In addition, in a death claim, if there are no dependents, living parents, spouse, children or partial dependents, death benefits will be paid to the Second Injury Fund.

When and How Should Claims Be Reported?

If an employer/carrier feels they have a workers= compensation claim in which the Second Injury Fund may be involved, they should notify the South Carolina Second Injury Fund, Ste. 119, 220 Executive Center Drive, Columbia, South Carolina 29210, as soon as practicable, but in no event later than after the payment of the first 78 weeks of compensation. A copy must be sent to the Workers' Compensation Commission.

The Second Injury Fund will, upon receipt of the notification of possible claim, forward the necessary claim forms.

This brochure is intended for general information and use only. Users should refer to the statute (Section 42-9-400 SC Code of Laws) and/or obtain the services of a professional concerning specific circumstances dealing with a specific claim.